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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,313	04/25/2000	Amit D. Agarwal	249768020US1	9641

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EXAMINER

LANEAU, RONALD

ART UNIT PAPER NUMBER

3627

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/558,313

Applicant(s)

AGARWAL, AMIT D.

Examiner

Ronald Laneau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. In view of the arguments in the Appeal Brief, prosecution is thereby reopened.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-26, 36-38 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney (US 6,026,376) in view of Ono (US 5,909,023).

Ono was previously cited by Applicant.

Kenney discloses a method in a data processing system for automatically initiating the replenishment of a consumable product comprising the steps of receiving an order for a customer and filling that order on a first date and estimating a target date for suggesting replenishment (col. 11, lines 12-34). The user is provided with an indication that the product should be replenished (see Figures 5 and 7 and col. 12, lines 50-54). The consumer then requests replenishment of the product by performing an interaction, and the product is ordered (Fig. 10A). The target date is estimated based on the first date and the average life span of the item, which in turn is determined by the length of intervals between purchases (col. 11, lines 26-34). It is implicit that Kenney employs a computer memory and a computer-readable medium containing instructions for carrying out the method. Kenney does not disclose the date on which the system provides the indication to the consumer. However, Ono discloses a purchase history information of each good purchased by a user that is stored at a service offering system and in response to an

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input of identification information from a service use system, the service offering system searches the purchase history information of the user corresponding to a user identifier and calculates a purchase interval of each good purchase by a user, the service offering system judges, for each good whose purchase interval was calculated, whether the time corresponding to the purchase interval has lapsed after the latest purchase day and the service offering system transmits information of the good whose time corresponding to the purchase interval has lapsed to the service via a communication network and displaying the information at the service use system (see abs).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to transmit information of the good whose time purchase has lapsed or to provide an indication to the consumer on or before the target date, so the consumer will not run out of the item as taught by Ono into the system of Kenney because it would estimate a demand occurrence time for each good and supply a user with the merchandise information at the estimated time of the next purchase.

Furthermore, the items being sold in Kenney are physical articles. However, the type of item being sold does not alter how the system functions. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the system of Kenney to sell any type of item because the type of item does not patentably distinguish the claimed invention.

Neither Kenney nor Ono teaches the step of determining a target date based on availability of an item. However, it is common in the art to only suggest the purchase of an item if that item is in stock. It therefore would have been obvious to one of ordinary skill in the art at the time the invention was made to use the availability of the item to determine a target date so that the indication is sent only if the item is available.

Neither Kenney nor Ono teaches the step of determining a target date based on the size of the item. However, it is commonly known in the art that the size of an item will impact the length of time it takes to consume. It would have been obvious to one of ordinary skill in the art at the time the invention was made to determine a target date based on the size of the item, so that a more accurate date is determined.

Neither Kenney nor Ono teaches the step of determining a target date base on an expiration date. However, it is commonly known in the art that items need to be replaced after they expire. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ to determine a target date based on an expiration date so that a customer will replace expired items.

Kenney does not teach the step of requesting replenishment of the product by performing a single action but a user is normally required to reorder a product by a single click over the Internet since most of the needed products are already stored in the user profile for reordering purposes.

4. Claims 27-35 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney (US 6,026,376) in view of Ono (US 5,909,023) and further in view of Hirst (US , 5,655,174).

Kenney and Ono teach all of the limitations of the claims except for the step of scheduling a time for transmission of a unilateral transmission indicating that the item should be purchased. However, Hirst discloses a processor 38 providing a signal to controls and displays 42 to indicate a warning message reminder to schedule a reordering process for a particular product and sometimes the reordering is done automatically as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to transmit information of the good whose time purchase has lapsed or to provide an indication to the consumer on or before the target date, so the consumer will not run out of the item as taught by Ono into the system of Kenney because it would estimate a demand occurrence time for each good and supply a user with the merchandise information at the estimated time of the next purchase. And it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the message indication and the automating reordering as taught by Hirst into the combined systems of both Kenney and Ono because it would ensure that customers are aware of an upcoming event and that products are ordered in a timely fashion.

Response to Arguments

5. Applicant's arguments about Kenney not teaching a current date, a target date as claimed are moot in view of the newly added reference which discloses such elements. In response to applicant's arguments that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally

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available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). All other applicant's arguments have been addressed in the office action and the previous response to arguments. These arguments are deemed unpersuasive and claims 1-47 remain rejected.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (571) 272-6784. The examiner can normally be reached on Mon-Fri from 8:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ronald Laneau

Ronald Laneau
Examiner
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12/27/05